

Protective Order Committee
Judicial Conference of Indiana

Minutes
September 12, 2001

The Protective Order Committee met at the Westin Hotel in Indianapolis on Wednesday, September 12, 2001 from 4:30 p.m. – 5:45 p.m.

1. Members present. George R. Brown, Robert E. Lybrook, Chris Monroe, Jerry L. Ummel, and John W. Forcum, Chair
2. Staff present. Jeffrey Bercovitz and Tom Jones provided the committee with staff assistance.
3. Others present. Senior Judge Ruth Reichard also attended the meeting.
4. Minutes approved. The minutes for the committee meeting on August 24-25, 2001 were approved.
5. Model Protective Order Act for Indiana.
 - a. The committee held a session to receive comments from courts about the draft Indiana Civil Protective Order Act. A copy of those remarks is attached. (Attachment No. 1) Mr. Bercovitz distributed a copy of the draft Indiana Civil Protective Order Act. The committee members agreed to revise the summary.
 - b. Judge Forcum distributed a letter from the National Council of Juvenile and Family Court Judges inviting Indiana to become a Model Code state. Judge Forcum explained this would permit speakers and technical assistance at no cost to Indiana. The committee members agreed to become a model code state by consensus.
 - c. The committee agreed to have Judge Reichard, in response to a meeting with Deb Hepler, an attorney for the Greater Indianapolis Employers Against Domestic Violence, draft language concerning workplace violence since Indiana's laws are inadequate in this area.
6. Next meeting dates. Committee members agreed meet at the following times: Friday, November 2, 10:30 a.m. – 12:00 noon and 1:00 p.m. – 4:00 p.m. for a public hearing and meeting after, Friday, November 30, 2001 from 12:30 p.m. – 4:00 p.m.; Wednesday, Jan. 23, and Wednesday, February 27, 2001 from 11:00 a.m. – 3:00 p.m. in order to meet with legislators; and Friday, March 22, 2002 from 12:30 p.m. – 4:00 p.m.

Respectfully submitted,

Jeffrey Bercovitz, Director
Juvenile and Family Law

Attachment No. 1

Notes from September 12, 2001 Meeting of Protective Order Committee and Forum on the Protective Order Draft

Meeting began at 4:37P.

We agreed to change the “Executive Summary” portion of the draft to match what is on the “in.gov” web site.

The question was asked, if a petitioner brings a case that is not related to domestic or family violence, would he/she still have to pay a filing fee? Obviously, the questioner misunderstood who qualifies for a PO under the new Act.

Judge Forcum said we do plan on addressing the issue of workplace violence (but not call the remedy a “protective order”—instead, call it something like a “restraining order”).

The statement was made that, “its all neighbors have” (meaning a PO is their only remedy), while the person making the statement agreed that they (PO’s between neighbors) take up a lot of time on dockets (& seeming to say it’s a good idea to limit to family violence cases).

Judge Diana LaViolette of Putnam County had a question on 34-26-5-6 re: *ex parte* provisions; she was concerned because the *ex parte* provision is so sweeping; concerned about due process issues with no hearing.

Judge Frank Nardi of Owen County: wants to be able to evict at the beginning of the case, and issue temporary custody orders without a hearing, so wants the statutory authority to do so. He says we should have the hearing within 48 hours of issuing the *ex parte* orders.

Judge Natalie Conn of Grant County: agrees with Model Code because it would limit the cases to family violence; says the hearing date (after the *ex parte* order is issued) should be sooner than 30 days, maybe 7 days if there’s an eviction/custody order. After all, in landlord/tenant disputes, the time frame is only 3 days.

Magistrate Caryl Dill of Marion County: creates an alternative to divorce court re: immediate relief in a PO action, vs. having to wait in dissolution case. Concerned that the PO case may be short-lived (as petitioners—or their attorneys—manipulate the system to get a quick response in a PO case instead of following the rules in a divorce case), but consequences, like child support and income withholding, will last even after the PO case is dismissed.

Judge Forcum pointed out that a person would still be able to get a TRO under our proposal.

Judge Cecile Blau of Clark County: private attorneys will send clients for PO’s instead of filing divorce case because it’s cheaper; concerned that parties will abuse the system.

Judge Forcum: it happens now (the court-shopping).

The judges wanted to know how to prevent abuse of the system.

Judge Forcum: our draft doesn't say you have to give custody/evict *ex parte*, just that you can.

A judge (couldn't identify) said he/she was opposed to *ex parte* relief.

Judge Frank Nardi of Owen County: frustration with the present PO statute is illustrated by the comments today he suggests, re: *ex parte*/custody, the statute doesn't create a presumption that π gets custody after a hearing/dissolution etc., plus that the parenting guidelines should apply for visitation [Ruth notes here—the parenting guidelines do not apply if there's family violence, right?] [Jeff notes: The parenting time guidelines do not apply if there is family violence.]. The person who gets custody must keep the court informed of the location of the children so there's no child abduction. Regarding *ex parte* orders: uncomfortable with affidavits; should follow TR 65 (B) re: notice to the other party ("I called Δ & told him I was coming to court at 3:00P to ask for EPO").

Judge Diana LaViolette of Putnam County: how do we know the π isn't lying about notice?

Judge Keith Meier of Warrick County: regarding PO's vs. TRO's, different standards; he denied a TRO so the other spouse got an EPO based on a threat alone. We don't need PO's and TRO's. Concerned about the different legal standards to get each order. Concerned about Advisory Opinion #1-01. Regarding child custody, we should require security. Problems with inconsistency between statute & trial rules. He always tries to get a Δ on the phone at the EPO/TRO hearing. He says a problem is that 31-15-4, TR 65, and the PO statute all conflict with each other.

Magistrate Caryl Dill of Marion County: Don Lundberg says it is misconduct for an attorney to send a client to get an EPO "in the meantime" before a dissolution is filed.

Judge Keith Meier of Warrick County: maybe the new statute will address the inconsistency. Had a question re: personal effects (34-26-5-6 (2)(e)).

Judge Diana LaViolette of Putnam County: agrees with Judge Meier that it needs more detail.

Judge Meier: specify the time and date in the order for police to come, or that π must take the property to someone else's home.

Judge LaViolette: the draft prohibits the judge from ordering mediation/ADR in family violence cases. She doesn't agree with that. It should be available in Family Violence cases; it should be discretionary.

Judge Forcum: you shouldn't send the question of whether to issue a PO to mediation.

Judge LaViolette: a judge should be allowed to refer to mediation if custody, visitation, and property division will be issues.

Judge Michael Shurn of Pulaski County: concerned about *ex parte* orders regarding property awards or division of property. He says, there should be no *ex parte* orders that could affect personal property. He believes in no *ex parte* orders because of Trial Rule 65 & Advisory Opinion #1-01.

Judge Meier: will there be any sanctions if π is dishonest?

Judge Forcum: could order costs plus prosecute for perjury.

Someone said that we should set the hearing within 24-48 hours after the *ex parte* order is issued.

Magistrate Jerry Ummel of Allen County: that will be impossible if you are in a high volume court.

Judge Conn: current system is unworkable and frivolous cases come in. The new statute will give some discretion to the court. She likes the definition of family violence in the draft because it applies to more “serious” cases.

Judge James Heimann of Adams County: not sure the new statute will solve problems, because still allows PO’s based on a threat alone.

Another Allen County judge: you don’t have to grant custody if you issue an EPO; you could still allow visitation.

Judge Robert Lowe of Putnam County: the language is ambiguous re: mutual PO’s. Can you have a joint hearing?

Judge Forcum: yes, but maybe the statute needs to spell out that a joint hearing is OK.

Judge Meier: 34-26-5-6(1)(a) vs. (2)—if the purpose is to protect the π , then why do you include/involve the children unless the children are also in trouble?

Judge Randy Bridges of Monroe County: limit the PO statute to domestic violence only. He strongly supports that. He has no problem with the *ex parte* orders, but he does set those matters for hearing within 10 days. He disagrees with *ex parte* custody awards and division of property because of due process concerns.

Judge Conn: have to change T.R. 65 if we change the PO statute, to make everything “match”.

Judge Bridges: due process is a constitutional issue. He repeated his earlier statement.

Magistrate Caryl Dill: what is our time line? Also raised the issue of forms/uniform forms. The Notice of Extension & Modification doesn’t contain the 3 Brady questions. This is a Tom Jones issue. Plus, when the PO is issued as a part of the divorce, the terms “petitioner” and “respondent” need to be named differently on uniform forms, because it can cause confusion.

Meeting ended at: 5:50 p.m.

Prepared by: Ruth D. Reichard